

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:  
**BMS SETTLEMENT**

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**PLAINTIFFS' NOTICE OF FILING OF [PROPOSED] ORDER DIRECTING NOTICE  
OF SETTLEMENT REVISION TO AFFECTED CLASS MEMBERS  
AND SCHEDULING FAIRNESS HEARING**

In an electronic entry dated May 5, 2011, the Court approved the proposed rebalancing of the BMS Settlement Allocation embodied in Dkt. No. 7530. Class Counsel now file herewith as Exhibit A a revised form of [Proposed] Order Directing Notice of Settlement Revision to Affected Class Members and Scheduling Fairness Hearing (the "Proposed Order").

The Proposed Order approves two forms of notice describing the revisions to the Proposed Settlement, one for affected Class 1 members and one for certain TPP members of Classes 2 and 3. The notices will *only* be mailed to the following BMS Class members: (i) those Class 1 Consumers who previously filed timely claims and will receive less under the revised distribution formula than they would have under the original formula; and (ii) all TPPs who previously filed timely claims. Using plain language, the notices describe the changes being made to the Proposed Settlement, provide clear instructions for filing objections to the revision, inform affected Class members of a supplemental fairness hearing date, and advise that the Court has decided not to provide an additional opportunity to request exclusion.

The schedule of events set forth in the Proposed Order (and discussed in the March 28, 2011 fairness hearing), is as follows:

Date	Event
May 24, 2011	Mailing of notices to affected Class members
July 1, 2011	Deadline for receipt of objections in response to the notices
July 7, 2011	Fairness hearing

The Proposed Order also appoints a new Escrow Agent. Although BMS has not yet funded the Proposed Settlement, the original preliminary approval order authorized the early creation of an Escrow Account to allow for payment of notice costs and appointed Frontier Bank to be the Escrow Agent. For the reasons set forth in Dkt. Nos. 6656 and 6676, Class Counsel believe that funds for the notice and, if the settlement is finally approved, funds for satisfying claims would be more safely invested with a larger and better capitalized institution. Accordingly, Class Counsel request that the Court appoint KeyBank Trust Department, 1301 Fifth Avenue, Suite 2400, Seattle, Washington (“KeyBank”), to be the new Escrow Agent for the BMS Settlement. At Class Counsel’s request, the Court previously transferred the GSK Settlement Funds to KeyBank and appointed it Escrow Agent under the GSK Settlement (*see* December 8, 2009 electronic order).

Plaintiffs and BMS jointly request that the Court enter the Proposed Order.

DATED: May 17, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing pleading to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on May 17, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

By /s/ Steve W. Berman

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